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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5602 of 2002
with
Civil Application No.2815 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANMADE TEXTILE RESEARCH ASSOCIATION

Versus

AMITBHAI K. GANDHI

Appearance:

MR KM PATEL for the Petitioner.

MR PRABHAKAR UPADYAY for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/07/2003

ORAL JUDGEMENT

Rule returnable today. Mr.Upadhyay, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for final hearing today.

By filing this petition, the petitioner-Association has challenged the interim order passed by the Labour Court, Surat in Reference (LCB) No.9 of 2000. By the impugned order, the Labour Court has asked the Management to prove the fact about the legality and validity of the departmental enquiry by leading evidence. As per the order of the Labour Court, the Management is required to prove the said fact by leading evidence in connection with the legality and validity of the departmental enquiry. It is not in dispute that the issue framed in connection with the legality of the departmental enquiry is required to be decided as a preliminary issue. During the pendency of this petition, it was suggested to the respondent that since defence has been taken by the respondent-workman that the departmental enquiry is not in accordance with law, he is required to prove the said fact by leading evidence and that burden is on him to prove the same. Mr.Upadhyay, who is appearing for the respondent, has fairly stated that the respondent has no objection if the respondent has to lead the evidence first, as, prima facie, the burden is on the shoulders of the respondent, because he is challenging the legality of the departmental enquiry.

In view of the aforesaid agreement on the part of the respondent-workman, by consent, the order of the Labour Court dated 15th April, 2002 is quashed and set aside and it is directed that the respondent shall prove the said fact by leading evidence first in this behalf in connection with the issue, which pertains to the legality and validity of the departmental enquiry. It is needless to say that after the evidence of the workman in this connection is over, the Management will be entitled to cross-examine the workman as well as to lead evidence in rebuttal thereafter. By this order, the respondent-workman is permitted to lead his evidence first. In view of this, the order passed in review will not survive and, therefore, it is not necessary to examine whether the Labour Court has committed an error in rejecting the review application.

Mr.Upadhyay, at this stage, submitted that the concerned employee is out of job since long and, as the Reference is pending since 2000, the Reference may be expedited. The request is reasonable. Under the circumstances, the Labour Court is directed to dispose of

the reference, being Reference (LCB) No.9 of 2000, as early as possible, and latest by 30th November, 2003. This direction is given in view of the assurance given by the learned Advocates for both the sides that their counterparts will cooperate for the early disposal of the Reference, and, as far as possible, they will not prefer any petition at an interlocutory stage so that the main Reference can be put to an end one way or the other.

In view of what is stated above, this petition is allowed, considering the consent given by the concerned workman. Rule is made absolute to the aforesaid extent, with no order as to costs.

In view of the above order in the Special Civil Application, no order in the Civil Application.

Writ to be sent forthwith.

(P.B. Majmudar, J.)

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(apj)